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REMARKS

I. Status of the Application

Claims 1-21 are pending in the application. In a Non-Final Office Action dated September 2, 2005 (the "Office Action"), the Examiner:

1. Noted that the Information Disclosure Statement ("IDS") submitted on June 29, 2001 has been considered by the Examiner;
2. Rejected claims 1-7 under 35 USC § 103(a) as being unpatentable over Hohl, "patient's satisfaction in Home Care/Hospice;"
3. Rejected claims 11-16 under 35 USC § 103(a) as being unpatentable over Hohl, stating that claims 11-16 are directed to the system for performing the method of claims 1-7, therefore, the same rejection has applied to claims 1-7 is also applied to claims 11-16;
4. Rejected claims 20 & 21 under 35 USC § 103(a) as being unpatentable over Hohl, stating that claims 20 & 21 are directed to the system for performing the method of claims 1 and 5, therefore the same rejections as applied to claims 1 and 5 are applied to claims 20 and 21;
5. Rejected claims 8-10 under 35 USC § 103(a) as being unpatentable over Hohl, in view of Nanos et al., U.S. Patent No. 6,381,744; and

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6. Rejected claims 17-19 under 35 USC § 103(a) as being unpatentable over Hohl, in view of Nanos, stating that claims 17-19 are directed to the system for performing the method of claims 8-10, therefore the same rejections as applied to claims 8-10 are applied to claims 17-19.

In this Response, Applicants have traversed the Examiner's rejection of claims 1-21 under 35 USC § 103(a). Accordingly, claims 1-21 remain pending in the present application. Applicants respectfully request reconsideration of the pending claims in view of the following remarks.

II. Summary of Arguments

To establish a *prima facia* case of obviousness under 35 USC § 103(a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references that have been combined or modified must teach or suggest all claim limitations. The suggestion or motivation to modify the reference or to combine reference teachings, and the reasonable expectation of success, must both be found in the prior art, not in Applicant's disclosure. MPEP § 2143 citing *In Re Baeck*, 947 F.2d 488, 493 (Fed. Cir. 1991). If any one of these three criteria are not met, then a case of *prima facia* obviousness can not be established.

As discussed in detail below, the 35 USC § 103(a) rejection is improper for at least two reasons. First, the rejection of independent claims 1, 11 and 20 under § 103(a) is improper

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because there is no motivation or suggestion to modify Hohl found either explicitly or implicitly within Hohl. Second, the rejection of independent claims 1, 11 and 20 under 35 USC § 103(a) is improper because, even modified, Hohl would still not teach each element of Applicants' independent claims 1, 11 and 20.

1. There is no motivation or suggestion to modify Hohl.

In the Office Action the Examiner asserted that "it would have been obvious to one of ordinary skill in the art at the time of the invention to automate the process of Hohl because the advantage of using a computer system over the internet allows users to transmit survey data between customers and managers regardless of physical location" (Office Action, p.3). Applicants respectfully traverse the rejections of claims 1-21 and submit that the Examiner fails to establish a *prima facia* case of obviousness because no motivation or suggestion exists within Hohl to convert the manual process of collecting individual patient surveys into an automated process and analysis using computers and the internet.

To establish *prima facia* obviousness, "there must be some suggestion or motivation, in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine teachings." MPEP § 2143; see also *In Re Danz*, 160 F.3d. 1339, 1343 (Fed. Cir. 1998); *Heidelberger Druckmaschinen v. Hantscho Commercial*, 21 F.3d. 1068, 1072 (Fed. Cir. 1994); *In Re Geiger*, 815 F.2d. 686, 688 (Fed. Cir. 1987); *Lindemann Maschinenfabrik v. Am Hoist and Derrick*, 730 F.2d. 1452, 1462 (Fed. Cir. 1984).

The suggestion to make the claimed combination or modification must come from the prior art and not from the Applicant's disclosure or from the level of skill in the art. *Id.* (citing *In*

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Re Vaeck, 947 F.2d. 488 (Fed. Cir. 1991)); MPEP § 2143.01 (citing *Al-Site Corp. v. VSI Int'l Inc.* 174 F.3d. 1308 (Fed. Cir. 1999)). "It is insufficient to establish obviousness that the separate elements of the invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the elements." *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.* 119 F.3d. 953, 957 (Fed. Cir. 1997). The fact that references can be modified or combined is insufficient to meet this criteria. *In Re Rouffet*, 149 F.3d. 1350, 1357 (Fed. Cir. 1998); *In Re Mills*, 916 F.2d. 680, 682 (Fed. Cir. 1990). Moreover, the fact that the modification or combination would be well within the ordinary skill in the art, by itself, is insufficient to meet this criteria. *Al-Site Corp. v. VSI Intern., Inc.* 174 F.3d. 1308, 1324 (Fed. Cir. 1999); *Ex parte Levengood*, 28 USPQ 2d. 1300, 1302 (Bd. Pat. APP. & Inter. 1993).

There is simply no suggestion or motivation within the Hohl reference to modify it to include all the elements of Applicant's invention. Hohl discloses a manual process whereby surveys are distributed to patients to complete and return. Hohl, ¶ 16. The surveys are not tailored to specific patients, but rather include standard questions, the majority involving regulatory items. The return rate of the surveys listed in Hohl is about 25%. *Id.* at ¶ 18. Even though case managers receive copies of all their patients surveys and are responsible for investigation and follow-up of negative responses, it is only in the quarterly aggregate, that any question with less than 90% favorable response rate requires intervention and development of an action plan. *Id.* at ¶ 17.

There simply is no suggestion or motivation within Hohl to automate the Hohl process using a central computer having at least one data base containing information about a plurality of

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customer respondents and a plurality of company managers associated with each of the plurality of customer respondents and connecting the central computer to a plurality of remote computers whereby a company at one local computer can solicit a survey response from a customer at a second local computer and whereby the central computer analyzes the customer survey and identifies any customer satisfaction issue for the company manager. If such automation of Hohl was so obvious, then Hohl would have discussed such automation. Hohl does not, and no one else has completed such automation of a customer relationship measurement and management system prior to Applicants' invention.

2. Even if Hohl were modified to include the use of a central computer connected to a plurality of remote computers through a network, Hohl would still not teach each element of Applicant's independent claims 1, 11 and 20.

Even if Hohl were modified as suggested by the Examiner, Hohl still would not teach at least one data base containing information about a plurality of customer respondents and a plurality of company managers associated with each of the plurality of customer respondents. Modifying Hohl to allow surveys to be taken over a computer and then transmitting the survey results via network to another computer does not suggest use of a central computer where a data base resides that not only includes information about customers and company managers but also includes a relationship between particular company managers and particular customers.

Moreover, Hohl, modified does not suggest processing the survey answers by the central computer to identify a customer's satisfaction issue of the selected respondent. Rather, the manual process identified in Hohl looks at the aggregate surveys taken on a quarterly basis. According to Hohl, intervention and development of an action plan is only triggered when one of

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the standard questions ask of all patients during a particular quarter of the year results in less than 90% favorable response rate. Hohl at ¶ 17. In contrast, Applicant's invention identifies a customer satisfaction issue for each respondent completing a survey and results in the preparation of an action plan by the corresponding company manager to address the customer satisfaction issue of the selected customer respondent.

Additionally, with respect to independent claim 20, and in addition to the absence of the elements discussed above, the modified Hohl reference, as suggested by the Examiner, does not disclose "an account management tool accessible by the plurality of company managers at one of a plurality of remote computers connected to the central computer, the account management tool including (a) an account information page operable to display a plurality of customer respondents, and (b) a customer action page accessible through the account information page inoperable to display a customer satisfaction issue identified by one of the plurality of company respondents and prompt one of the plurality of company managers to enter an action plan to address the customer satisfaction issue." Even if Hohl were modified to use computers to conduct the patient surveys, there is simply no suggestion or motivation in Hohl to modify Hohl to include the sophisticated account management tool claimed in Applicant's claim 20.

3. The rejections of claims 2-10, 12-19, and 21 under 35 USC § 103(a) should also be withdrawn.

Applicants respectfully submit that the rejection of claims 2-10, 12-19, and 21 under 35 USC § 103(a) should also be withdrawn because, as shown in detail above, these claims depend from allowable base claims 1, 11, and 20 respectively. A dependent claim that depends from an allowable base claim is also allowable. (MPEP § 608.01(n))

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CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the Applicants have made a patentable contribution to the art and that this response places the above identified application in condition for allowance. Favorable reconsideration and allowance of this application is respectfully requested.

Applicants respectfully petition for a two month extension of time within which to respond to the September 2, 2005 Office Action. A check in the amount of \$225.00 is enclosed, which is the fee for the two month extension of time.

In the event that Applicants have inadvertently overlooked the need for payment of an additional fee, Applicants conditionally petition therefore, and authorize any fee deficiency to be charged to deposit account 09-0007.

Respectfully submitted,

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